

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Moran	Team: Squad #6	CCRB Case #: 201911019	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/11/2019 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 105	18 Mo. SOL 6/11/2021	EO SOL 1/26/2022	
Date/Time CV Reported Mon, 12/16/2019 7:27 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/26/2019 4:13 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Gutierrez	01547	959678	105 PCT
2. POF Lauren Luciano	13945	963620	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Gutierrez	Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Jose Gutierrez	Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
C.POM Jose Gutierrez	Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.POM Jose Gutierrez	Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.POM Jose Gutierrez	Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F.POF Lauren Luciano	Discourtesy: Police Officer Lauren Luciano spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G.POM Jose Gutierrez	Abuse: Police Officer Jose Gutierrez refused to provide his name to § 87(2)(b)	§ 87(2)(b)
H.POM Jose Gutierrez	Abuse: Police Officer Jose Gutierrez refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On December 25, 2019, § 87(2)(b) reported a complaint to IAB under IA log number 2019-45093.

On December 11, 2019, § 87(2)(b) called the police because of an ongoing dispute with her neighbor, § 87(2)(b). At approximately 8 p.m., PO Jose Gutierrez and PO Lauren Luciano from the 105th Precinct responded to the § 87(2)(b) house located at § 87(2)(b). § 87(2)(b)'s mother, § 87(2)(b) asked PO Gutierrez in Spanish what she should do regarding the dispute. PO Gutierrez allegedly told her they were going to have to live with it or “move the fuck out” (**Allegation A: Discourtesy** – § 87(2)(g)). The officers then spoke with § 87(2)(b) and left.

About an hour later, § 87(2)(b) called the police again because § 87(2)(b) and § 87(2)(b)'s sister, were involved in a dispute with § 87(2)(b). PO Gutierrez and PO Luciano responded, and PO Gutierrez allegedly said over the patrol vehicle loudspeaker that they were tired of “these fucking calls” (**Allegation B and C: Discourtesy** – § 87(2)(g)). PO Gutierrez then allegedly asked § 87(2)(b) and § 87(2)(b) what “the fucking problem” was now (**Allegation D and E: Discourtesy** – § 87(2)(g)). § 87(2)(b) told him there was a fight and PO Luciano allegedly told § 87(2)(b) to “shut the fuck up” and get in the house (**Allegation F: Discourtesy** – § 87(2)(g)). § 87(2)(b) was subsequently arrested and PO Gutierrez and PO Luciano placed her in the patrol vehicle. § 87(2)(b) went to the police vehicle where both officers were seated and asked them for their names and shield numbers. PO Gutierrez allegedly said that she was not entitled to that information (**Allegation G and H: Abuse of Authority** - § 87(2)(g)). PO Luciano verbally provided her information. The officers then left. § 87(4-b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) were arrested for § 87(2)(b) (BR 1-2).

Thirteen body-worn cameras videos were obtained (BR 3-15).

Allegation (A) Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)

PO Gutierrez received the first radio call, event #§ 87(2)(b), about an assault in progress at § 87(2)(b) (BR 28). The call was made by the § 87(2)(b) party and mentioned a female violated an order of protection and a knife was involved. After the officers left the first time, § 87(2)(b) and § 87(2)(b) stood outside their house to wait for an Uber. § 87(2)(b) allegedly broke her house window and ran outside and started fighting with § 87(2)(b). PO Gutierrez then received a second call at approximately 9:09 p.m. about an assault in progress at § 87(2)(b). The second call did not contain any information about any weapons involved. The § 87(2)(b) party and § 87(2)(b) have an ongoing dispute that has resulted in multiple calls to the police. PO Gutierrez and PO Luciano have responded multiple times to the § 87(2)(b) residence about disputes between neighbors over the year. § 87(2)(b) has a restraining order against § 87(2)(b).

PO Gutierrez's first BWC captured the first time he responded at 8:00 p.m. At the 53 second mark of PO Gutierrez's first BWC footage, he told a group of individuals, including § 87(2)(b) and § 87(2)(b) that if they were not involved in the incident to go inside their house (BR 3).

At the 1:14 minute mark, PO Gutierrez again told § 87(2)(b) to go inside her house because he was “sick and tired” of hearing them. PO Gutierrez then separated § 87(2)(b) from the group and said there have been constant calls to the location. He added that as the case was already being resolved in court, PO Gutierrez stated that § 87(2)(b) did not have to call 911 every time she saw § 87(2)(b). He advised § 87(2)(b) that if § 87(2)(b) saw § 87(2)(b) § 87(2)(b) should remain in her home, do not speak and do not say anything. The conversation continued for three minutes with no profanity used by PO Gutierrez.

§ 87(2)(b) testified that when PO Gutierrez responded to her call the first time, she told PO Gutierrez that § 87(2)(b) tried to start a fight (BR 16). He told § 87(2)(b) to go back to her house and ignore § 87(2)(b) then had a conversation with PO Gutierrez in Spanish and asked him what she should do about the situation. PO Gutierrez told her that they were going to have to live with it or “move the fuck out.” The officer then spoke with § 87(2)(b) and left.

§ 87(2)(b) was unavailable to the investigation.

PO Gutierrez testified that the conversation with § 87(2)(b) was calm and she told him what happened (BR 18). PO Gutierrez did not believe he used profanity or that he said they were going to have to live with the situation or “move the fuck out.” PO Gutierrez did not make any statements to § 87(2)(b) about moving away.

PO Luciano testified that she did not remember if PO Gutierrez told § 87(2)(b) that she would have to live with it or “move the fuck out” (BR 19). She did not recall if PO Gutierrez used any profanity. PO Gutierrez spoke Spanish with some of the civilians during the incident, but PO Luciano does not speak Spanish.

PO Gutierrez’s BWC showed that he told § 87(2)(b) to go inside her house multiple times before he spoke with § 87(2)(b) separately. However, his BWC showed that when he spoke with § 87(2)(b) when profanity was alleged, he only informed her that § 87(2)(b) cannot call the police every time she saw § 87(2)(b). Though § 87(2)(b) told PO Gutierrez that they had moved into the area and were having issues with the neighbor, PO Gutierrez never responded that they should “move the fuck out.” PO Gutierrez’s BWC confirmed he did not use any profanity during the entire interaction with § 87(2)(b) when it was alleged.

§ 87(2)(g)

Allegation (B) Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)

Allegation (C) Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that the second time PO Gutierrez and PO Luciano responded to her call, PO Gutierrez said over the police vehicle loudspeaker that they were tired of “these fucking calls.”

In a phone statement, § 87(2)(b) stated that at some point during the incident, PO Gutierrez and PO Luciano used profanity over the patrol vehicle loudspeaker (BR 17). She did not specify

what the officers said. No allegation of profanity was plead against PO Luciano since § 87(2)(b) could not specify what she said over the loudspeaker.

PO Gutierrez and PO Luciano's BWC footage opened with officers already on scene with civilians and did not capture when the officers arrived on scene or were in their patrol vehicle.

PO Gutierrez testified that he did not use any profanity during the incident. He did not say over the police vehicle loudspeaker that they were tired of "these fucking calls." He did not remember saying anything over the vehicle loudspeaker.

PO Luciano testified that she did not recall having any conversation over the patrol vehicle loudspeaker when she first arrived. She did not recall if PO Gutierrez used any profanity or state that he was, "tired of these fucking calls."

Though § 87(2)(b) corroborated that PO Gutierrez used profanity when he spoke over the loudspeaker, she could not specify what was said and who said it. PO Gutierrez denied using profanity over the loudspeaker and PO Luciano testified she did not recall. As noted, BWC footage was not turned on until the officers exited their vehicle and approached the civilians.

§ 87(2)(g)

Allegation (D) Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)

Allegation (E) Discourtesy: Police Officer Jose Gutierrez spoke discourteously to § 87(2)(b)

PO Gutierrez's second BWC started with him on scene in front of the steps of § 87(2)(b)'s home (BR 4). § 87(2)(b) and at least other two individuals were screaming. At 43 seconds, PO Gutierrez asked § 87(2)(b) to stop yelling. At 1:31 minutes, § 87(2)(b) exited the house and provided PO Gutierrez with an explanation of the incident. An officer off camera is heard continually asking everyone to be quiet. At the 1:55 mark, PO Gutierrez stated that "this girl" was "driving [him] nuts already," driving him "freakin' nuts." PO Gutierrez then asked § 87(2)(b) to continue with her explanation. Following § 87(2)(b)'s explanation, PO Gutierrez then walked over to § 87(2)(b) residence. PO Gutierrez's BWC does not capture any profanity.

PO Gutierrez testified that when he responded the second time and got out of his vehicle, the individuals were actively engaging in a verbal confrontation. PO Gutierrez yelled to get control of the chaotic situation but did not use any profanity. PO Gutierrez spoke with § 87(2)(b) in Spanish and she recounted what occurred. The conversation was calm. PO Gutierrez could not recall if he spoke to anyone else in the § 87(2)(b) party. PO Gutierrez did not think he asked § 87(2)(b) and § 87(2)(b) what "the fucking problem" was now.

PO Luciano testified that PO Gutierrez spoke with one of the women from the § 87(2)(b) party while she spoke with § 87(2)(b) and the Uber driver (BR 19). PO Luciano did not recall if PO Gutierrez asked § 87(2)(b) and § 87(2)(b) "what the fucking problem was now."

§ 87(2)(b) testified that when PO Gutierrez and PO Luciano responded the second time, they exited their vehicle and came to speak with them. PO Gutierrez said that every time he came

there was a problem and asked what the “fucking problem was now.” § 87(2)(b) told him that there was a fight. PO Luciano then told § 87(2)(b) to “shut the fuck up” and get in the house. § 87(2)(b) told PO Luciano that she would not shut up.

In a telephone statement, § 87(2)(b) stated that she went downstairs to speak with the officers and that PO Gutierrez was aggressive from the start. After he exited the vehicle, he approached the civilians in front of their house and said he was “fucking” tired of all the calls. She told PO Gutierrez that she had called 911. He stated he did not care who called 911 and that he wanted all the “fucking issues” to stop and he was tired of this “fucking shit.” When § 87(2)(b) told PO Gutierrez a male threatened her, he told her to leave those “fucking” people alone. PO Gutierrez then walked back to his patrol vehicle.

PO Gutierrez’s BWC showed that he told § 87(2)(b) to be quiet and then spoke with § 87(2)(b) about what happened. He then told her that § 87(2)(b) drove him “freakin’ nuts” and then asked § 87(2)(b) to continue to explain. However, his BWC showed that when he spoke with § 87(2)(b) during the time profanity was alleged, he asked her to explain what happened and told her that § 87(2)(b) drove him nuts. He never asked what the “fucking” problem was now. PO Gutierrez’s BWC confirmed he did not use any profanity during the entire interaction with § 87(2)(b) or § 87(2)(b) when it was alleged.

§ 87(2)(g)

Allegation (F) Discourtesy: Police Officer Lauren Luciano spoke discourteously to § 87(2)(b)

It is undisputed that PO Luciano told § 87(2)(b) to “shut her mouth” and “shut up.”

At the 4:37 minute mark of PO Luciano’s BWC, PO Luciano was speaking with another officer about the incident when § 87(2)(b) began to yell at PO Luciano (BR 6). PO Luciano told § 87(2)(b) that she was not talking to her and to “shut her mouth.” PO Luciano then continued to talk with an officer. § 87(2)(b) then began to yell at PO Luciano again. At the 5:01 mark, PO Luciano told § 87(2)(b) that she was not talking to her and to “shut up.” She then continued and told § 87(2)(b) to get in her house and shut the door and that she would not talk to her again. PO Luciano did not use any profanity.

§ 87(2)(b) testified that the second time the officers responded, they exited their vehicle and came to speak with her. PO Gutierrez said that every time he came there was a problem and asked what the “fucking problem was now.” § 87(2)(b) told him that there was a fight. PO Luciano then told § 87(2)(b) to “shut the fuck up” and get in the house. § 87(2)(b) told PO Luciano that she would not shut up.

§ 87(2)(b) stated PO Luciano used profanity but could not specify what was said.

PO Luciano testified that she did not recall if she used any profanity when she spoke with § 87(2)(b) or if she told her to “shut the fuck up and get in the house.” PO Luciano did not recall if any officer used profanity.

PO Gutierrez testified that he did not hear any conversation between PO Luciano and § 87(2)(b). He did not think he heard PO Luciano use any profanity or tell § 87(2)(b) to “shut the fuck up” and get in the house.

DAO-DCT Case number 2017-17005 states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (BR 29). The NYPD is committed to accomplishing its mission by treating every citizen with compassion, courtesy, professionalism and respect. Officers pledge to value human life, respect the dignity of each individual and render our services with courtesy and civility, Patrol Guide Section 200-02 (BR 30).

§ 87(2)(g)
[REDACTED]

[REDACTED]

Allegation (G) Abuse of Authority: Police Officer Jose Gutierrez refused to provide his name to § 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Jose Gutierrez refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) testified that after § 87(2)(b) was arrested and placed into a police vehicle, she walked to PO Gutierrez and PO Luciano’s vehicle where § 87(2)(b) stood. § 87(2)(b) asked PO Gutierrez and PO Luciano for their names and badge numbers. PO Luciano verbally provided § 87(2)(b) with her name and badge number. PO Gutierrez said that she was not entitled to that information. The officers then drove away.

During a phone statement, § 87(2)(b) stated that § 87(2)(b) obtained PO Gutierrez’s name and shield number at some point. PO Luciano provided her shield number over the patrol vehicle loudspeaker.

PO Gutierrez and PO Luciano’s BWC ends before the officers returned to their vehicle and did not capture when the requests were alleged.

PO Gutierrez testified that he did not remember if he spoke with § 87(2)(b) or § 87(2)(b) when he was in his police vehicle before he left the scene (BR). He did not remember if § 87(2)(b) or any civilian asked for his name and shield number. He did not refuse to provide his name or badge number. He did not tell § 87(2)(b) that she was not entitled to his information. He did not provide his name or badge number to any civilian during this incident.

PO Luciano testified that she did not remember if she had any conversation with any civilians while

she was in her patrol vehicle (BR). She did not remember if § 87(2)(b) and § 87(2)(b) were next to her patrol vehicle or if § 87(2)(b) asked for her and PO Gutierrez's names and shield numbers. PO Luciano stated that PO Gutierrez gave a business card to one of the female individuals on scene, but she did not know who or when. She could not provide a description of the individual, but it was one of the individuals who was a party to the conflict on § 87(2)(b)'s side of the family. PO Luciano thought that the individual asked for the business card, but she did not recall. PO Luciano did not recall if PO Gutierrez told § 87(2)(b) that she was not entitled to his name and shield number. She did not recall if any officer refused to provide their name or shield number.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 21).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 22).
- PO Gutierrez has been a member of service for five years and this is the first CCRB complaint to which he has been a subject (BR 23).
- PO Luciano has been a member of service for three years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of March 6, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR 25).

- § 87(2)(b), § 87(2)(c)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 6

Investigator: Julia Moran Inv. Julia Moran 1/13/2021
Signature Print Title & Name Date

Squad Leader: § 87(2)(b) Peña IM § 87(2)(b) Peña 1/13/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date